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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/609,598	06/29/2000	Jay S. Walker	00-023	1725

22927 7590 09/25/2002

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EXAMINER

THEIN, MARIA TERESA P. O.

ART UNIT

PAPER NUMBER

3625

DATE MAILED: 09/25/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/609,598

Applicant(s)

WALKER ET AL.

Examiner

Marissa Thein

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-66 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-66 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2. 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Specification*

The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

**Claim 66 is rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,058,379 to Odom et al.** Odom discloses a method for facilitating a transaction comprising: providing an indication of a plurality of product categories; providing buyer offer information; and receiving an indication of selected products (see

at least abstract, summary; col. 5, line 11 – col. 6, line 4; col. 6, lines 20-54; col. 7, line 62 – col. 8, line 29).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1-4, 6-39, 42-52, 55-59 and 65 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,058,379 to Odom et al. in view of U.S. Patent No. 5,822,736 to Hartman et al.**

Regarding to claims 1-4, 6-18, 28-33, 49-52, 55-58, and 65, Odom discloses a method and apparatus of facilitating a transaction comprising: receiving an indication of a plurality of product categories; receiving buyer offer information; providing an indication of the selected products; receiving the indication from the buyer; receiving the indication via at least one of: a communication network, the Internet, a Web site, a telephone network, a wireless network, and a proprietary network; receiving the indication from at least one of: a buyer device, personal computer, a personal digital assistant, a telephone, a controller, a merchant device, a kiosk, an interactive voice response unit, an operator, a point of sale terminal, and an automated teller machine device; wherein the indication and the buyer offer information are received with respect to a single transaction; receiving the buyer offer information from the buyer; receiving the buyer offer information via at least one of: a communication network, the Internet; a

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Web site; a telephone network, a wireless network, and a proprietary network; receiving the buyer offer information from at least one of: a buyer device, personal computer, a personal digital assistant, a telephone, a controller, a merchant device, a kiosk, an interactive voice response unit, an operator, a point of sale terminal, and an automated teller machine device; wherein the buyer offer information comprises a binding offer; wherein the indication of an offer amount comprises a buyer-defined offer amount; and selecting at least one of the selected products based on the offer amount (see at least abstract, summary; col. 5, line 11 – col. 6, line 4; col. 6, lines 20-54; col. 7, line 62 – col. 8, line 29). Furthermore, Odom discloses providing the indication of the selected products to the buyer; providing the indication of the selected products to a merchant, providing the indication of the selected products via at least one of: a communication network, the Internet, a Web site, a telephone network, a wireless network, and proprietary network; receiving the indication of the plurality of products and the receiving the buyer offer information are performed via a first communication, and the providing the indication of selected product is performed via second communication network; providing the indication of the selected products to at least one of: a buyer device, a personal computer, a personal digital assistant, a telephone, a controller, a merchant device, a kiosk, an interactive voice response unit, an operator, a point of sale terminal, and an automated teller machine device (see at least abstract, summary, col. 7, line 62 – col. 8, line 46). Moreover, Odom discloses arranging for a buyer to provide payment of an amount based on the offer amount in exchange for the selected products (see at least col. 13, lines 26-42). However, Odom does not disclose the selecting a subset of

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the plurality of products for each of the product categories; an indication of a plurality of acceptable products; wherein the indication of the plurality of products is retrieved from a database; a plurality of product category offer amounts; a selection from a list of suggested offer amounts; a particular product for at least one of the product categories; selecting at least one of the selected products based on: a transaction history, address, demographic information, psychographic information, a credit rating, and another offer; and selecting at least one of the selected products based on the offer amount.

Hartman, on the other hand, teaches the selecting a subset of the plurality of products for each of the product categories; an indication of a plurality of acceptable products; wherein the indication of the plurality of products is retrieved from a database; a plurality of product category offer amounts; a selection from a list of suggested offer amounts; a particular product for at least one of the product categories; selecting at least one of the selected products based on: a transaction history, address, demographic information, psychographic information, a credit rating, and another offer; and selecting at least one of the selected products based on the offer amount (see at least abstract; summary; col. 3, lines 24-46; col. 4, line 33 – col. 5, line 22; col. 10, lines 19-47). It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the method of Odom to include the selecting a subset of the plurality of products for each of the product categories, as taught by Hartman, in order to assign varying price margins to the plurality of products based on the customer's selection.

Regarding to claim 19-27, Odom discloses substantially the claimed invention, however, it does not disclose selecting at least one of the selected products based on

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subsidy, wherein the subsidy is associated with at least one of the selected products, with at least one product that was not selected, and with a manufacturer of at least one of the selected products. Furthermore, Odom does not disclose wherein the subsidy is associated with at least one of: a buyer, a controller, and a merchant. Moreover, Odom does not disclose wherein the subsidy is associated with at least one of: a product identifier, a product category, a product manufacturer, a product brand, a product description, a product quantity, a product class, at least one product feature, an accessory associated with the product, a product condition, a product preference, an offer period, a product cost, a product retail price, the offer amount, delivery information, and payment information; and tracking subsidies applied to a transaction. Hartman, on the other hand, teaches selecting at least one of the selected products based on subsidy, wherein the subsidy is associated with at least one of the selected products, with at least one product that was not selected, and with a manufacturer of at least one of the selected products. Furthermore, Hartman teaches wherein the subsidy is associated with at least one of: a buyer, a controller, and a merchant. Moreover, Hartman teaches wherein the subsidy is associated with at least one of: a product identifier, a product category, a product manufacturer, a product brand, a product description, a product quantity, a product class, at least one product feature, an accessory associated with the product, a product condition, a product preference, an offer period, a product cost, a product retail price, the offer amount, delivery information, and payment information; and tracking subsidies applied to a transaction. (See at least abstract, summary, col. 4, line 34 – col. 5, line 60; col. 8, lines 1-67). It would have

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been obvious to one of ordinary skill in the art at the time of the invention was made to modify the method of Odom to include the selecting of a least one of the selected products based on subsidy, as taught by Hartman, so as to provide a method that allows sellers or dealers more flexibility and direct control over the retail pricing of the products.

Regarding to claims 34-39 and 47-48, Odom discloses the method of facilitating a transaction further comprising evaluating the buyer offer information based on the offer amount. Furthermore, Odom discloses determining that the buyer offer information is not acceptable and providing a suggested modification to the buyer offer information. (See abstract, summary; col. 6, lines 28-63; col. 7, line 62 – col. 8, line 46). However, Odom does not disclose wherein the evaluating is based on a transaction history, an address, demographic information, psychographic information, a credit rating, another offer, and an indication of a plurality of merchants; calculating a probability that an offer will be accepted based on the offer amount; further based on at least one minimum acceptable price associated with the selected products, and wherein the minimum is based on product cost and product retail price and further comprises calculating a total minimum acceptable price based on the sum of each minimum acceptable price associated with each of the selected products and comparing the total minimum acceptable price to the offer amount. Hartman, on the other hand, teaches wherein the evaluating is based on a transaction history, an address, demographic information, psychographic information, a credit rating, another offer, and an indication of a plurality of merchants; calculating a probability that an offer will be accepted based



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on the offer amount; further based on at least one minimum acceptable price associated with the selected products, and wherein the minimum is based on product cost and product retail price and further comprises calculating a total minimum acceptable price based on the sum of each minimum acceptable price associated with each of the selected products and comparing the total minimum acceptable price to the offer amount (see at least abstract; summary; col. 3, lines 24-46; col. 4, line 33 – col. 5, line 22; col. 6, line 12 – col. 7, line 40; col. 8, lines 8-67). It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the method of Odom to include the evaluation based on criteria associated with a buyer, as taught by Hartman, so as to enable a seller to accept a buyer's offer based on the buyer's evaluation.

Regarding to claims 42-46, Odom discloses substantially the claimed invention, however, it does not disclose the evaluation is based on a subsidy, wherein determining the subsidy is based on the plurality of product categories and selecting the subsidy from a plurality of potential subsidies. Furthermore, Odom does not disclose the subsidy is based on information associated with a buyer, and at least one of: a product identifier, a product category, a product manufacturer, a product brand, a product description, a product quantity, a product class, at least one product feature, an accessory associated with the product, an age associated with the product, a product condition, a product preference, an offer period, a product cost, a product retail price, the offer amount, delivery information, and payment information. Hartman, on the other hand, discloses the evaluation is based on subsidy, as disclosed above (see at least

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abstract, summary, col. 4, line 34 – col. 5, line 60; col. 8, lines 1-67). It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the method of Odom to include the evaluation based on subsidy, as taught by Hartman, so as to provide a method that allows sellers or dealers more flexibility and direct control over the retail pricing of the products.

**Claims 40-41 and 60-64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Odom in view of Hartman and in further view of U.S. Patent No. 5,905,975 to Ausubel.**

Regarding to claims 40-41, Odom in view of Hartman discloses substantially the claimed method, however, Odom in view of Hartman does not disclose applying a penalty to the buyer based on the evaluation, wherein the penalty comprises at least one of: arranging for a buyer to provide payment of a penalty amount, and preventing at least one subsequent offer from the buyer. Ausubel, on the other hand, teaches applying a penalty to the buyer based on the evaluation, wherein the penalty comprises at least one of: arranging for a buyer to provide payment of a penalty amount, and preventing at least one subsequent offer from the buyer (see col. 29, line 62 – col. 30, line 19). It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the method of Odom and Hartman to include applying a penalty to the buyer, as taught by Ausubel, so as to allow the seller to respond to the buyer's offer in a reasonable way.

Regarding to claims 60-64, Odom discloses substantially the claimed invention, however, Odom does not disclose selecting a subset of the plurality of products for each

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of the product categories and applying a penalty to the buyer based on the offer amount. Hartman, on the other hand, teaches the selecting a subset of the plurality of products for each of the product categories (see at least abstract, summary, col. 3, lines 24-46; col. 4, line 33 – col. 5, line 22; col. 10, lines 19-47). However, the combination of Odom and Hartman does not disclose applying a penalty to the buyer based on the offer amount. Ausubel, on the other hand, teaches applying a penalty to the buyer based on the offer amount (see col. 29, line 62 – col. 30, line 19). It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the method of Odom and Hartman to include applying a penalty to the buyer, as taught by Ausubel, so as to allow the seller to respond to the buyer's offer in a reasonable way..

**Claims 53-54 and 59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Odom in view of Hartman and in further view of U.S. Patent No. 6,269,343 to Pallakoff.**

Regarding to claims 53-54, Odom in view of Hartman discloses substantially the claimed invention, however, Odom in view of Hartman does not disclose transmitting information enabling a buyer to take possession of the selected products at a merchant and arranging for the selected products to be delivered to a buyer. Pallakoff, on the other hand, teaches transmitting information enabling a buyer to take possession of the selected products at a merchant and arranging for the selected products to be delivered to a buyer (see at least col. 8, lines 54-62). It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the method of

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Odom and Hartman, to include transmitting the information enabling a buyer to take possession of the product and arranging for the products to be delivered, as taught by Pallakoff, in order for the buyer to receive the product.

Regarding to claim 59, Odom discloses a computer-implemented method of facilitating the sale of products comprising: receiving from a buyer a payment identifier; receiving from the buyer an indication of a product category associated with a set of products; receiving from the buyer a binding buyer offer; selecting a product; evaluating the buyer offer based on the offer amount; arranging for they buyer to provide payment of an amount based on the offer amount using the payment identifier; and providing to the buyer an indication of the product (see at least abstract, summary; col. 5, line 11 – col. 6, line 4; col. 6, lines 20-54; col. 7, line 62 – col. 8, line 29). However, Odom does not disclose a first product category associated with a first set of products and a second product category associate with a first and second set of products. Furthermore, Odom does not disclose at least one of the first product and the second product are selected based on an associated subsidy. Hartman, on the other hand, teaches the first and second product category and the associated subsidy, as disclosed above (see at least col.4, line 34 – col. 5, line 46 and col. 8, lines 8-67). However, the combination of Odom and Hartman does not disclose the transmitting information enabling the buyer to take possession of the product at a merchant. Pallakoff, on the other hand, teaches the transmitting, as disclosed above (see at least col. 8, lines 54-62). It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the method of Odom and Hartman, to include transmitting the information enabling a

buyer to take possession of the product, as taught by Pallakoff, in order for the buyer to receive the product.

**Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Odom in view of Hartman and in further view of U.S. Patent No. 6,078,922 to Johnson et al.** Odom in view of Hartman discloses substantially the claimed invention, however, Odom in view of Hartman does not disclose the product brand. Johnson, on the other hand, teaches the product brand (see at least abstract and summary). It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the method of Odom and Hartman, to include the product brand, as taught by Johnson, so as to provide a method that uses an additional code (brand name) in connection with a product description in order to identify the product.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marissa Thein whose telephone number is 703-305-5246. The examiner can normally be reached on Monday-Friday 8:30-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn Coggins can be reached on 703-308-1344. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9326 for regular communications and 703-872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

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September 22, 2002

  
**WYNN W. COGGINS**  
**SUPERVISORY PATENT EXAMINER**  
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